

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this Amendment, claims 1-11, 15-17 and 20-34 will be pending in the present application. Claims 8-11, 15-17, 20, 21, 27-31 and 33 have been withdrawn from consideration. In the April 21, 2009 Office Action, the Examiner indicated that claims 1-7, 32 and 34 are allowed, and that claims 23-26 are allowable.

Claim 22 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant respectfully submits that the above amendment to claim 22 corrects the specific deficiency cited by the Examiner. Accordingly, applicant respectfully requests that the above rejection of claim 22 be withdrawn.

Claim 22 also stands rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,484,719 to Bethon-Jones (“the ‘719 patent”). Applicant respectfully traverses this rejection for the reasons presented below.

Claim 22 recites an auto-titration pressure support system that includes “a controller coupled to the monitoring system and the pressure generating system, for controlling the base pressure based on the output of the monitoring system, wherein the controller determines a skewness of a patient’s inspiratory waveforms from the output of the monitoring system and controls the pressure generating system according to the skewness determination.” As is well known in the art, *skewness* is a statistical measure that refers to the degree of asymmetry of a distribution or curve. Once the *skewness* of the inspiratory waveforms is determined, that skewness value is used to control the pressure generating system. The present application describes one preferred way of calculating skewness of the patient inspiratory waveforms in paragraph 179. That preferred method is claimed in dependent claims 23-26.

The ‘719 patent does not disclose determining the skewness of the patient inspiratory waveforms and then using that skewness value to control a pressure generating system. Instead, the ‘719 patent describes the following at col. 21, lines 45-55:

Note that if the user has entered very short duty cycle, k will be small. For example a normal duty cycle is 40%, giving $k=40/60=0.67$. Thus the expiratory peak will be associated with a phase angle of $0.5+0.2*0.67=0.63$, corresponding 26% of the way into expiratory time, and the expiratory pause would start at $0.5+0.5*0.67=0.83$, corresponding to 67% of the way into expiratory time. Conversely, if the duty cycle is set to 20% in a patient with severe obstructive lung disease, features 6 through 10 will be skewed or compressed into early expiration, generating an appropriately longer expiratory pause.

This section of the '719 patent merely states that if the duty cycle of the system described therein is set to 20%, certain features of the expiratory phase (see the table at col. 21, lines 30-40, rules 6-10, e.g., expiratory peak and expiratory pause) will be pushed/moved in the direction ("skewed or compressed into") of early expiration. This does not disclose determining a *skewness value* of the patient *inspiratory waveforms* and then using that skewness value to control a pressure generating system, and thus does not disclose "a controller coupled to the monitoring system and the pressure generating system, for controlling the base pressure based on the output of the monitoring system, wherein the controller determines a skewness of a patient's inspiratory waveforms from the output of the monitoring system and controls the pressure generating system according to the skewness determination" as recited in claim 22.

For the reasons presented above, applicant respectfully submits that independent claim 22 is not anticipated or rendered obvious by the cited references. Accordingly, applicant respectfully requests that the above rejection of claim 22 be withdrawn.

This response is being filed within the three-month statutory response period which expires on July 21, 2009. In addition, no additional claim fees are believed to be required as a result of the above amendments to the claims. Nevertheless, the Commission is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 14-1270.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

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Note: The Commissioner is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 14-1270.